

**NEW HAMPSHIRE INDEMNITY COMPANY, INC.**

**2704 Commerce Drive, Suite B  
Harrisburg, PA 17110**

**NAIC COMPANY CODE 23833**

**MARKET CONDUCT EXAMINATION REPORT  
as of December 31, 2004**

**PREPARED BY INDEPENDENT CONTRACTORS FOR THE  
COLORADO DEPARTMENT OF REGULATORY AGENCIES  
DIVISION OF INSURANCE**

**NEW HAMPSHIRE INDEMNITY COMPANY, INC.  
2704 Commerce Drive, Suite B  
Harrisburg, PA 17110**

**MARKET CONDUCT  
EXAMINATION REPORT  
as of  
December 31, 2004**

**Prepared by**

**James T. Axman, CIE**

**Frederick T. Verny, Jr., AIE, FLMI**

**Independent Contract Examiners**

January 6, 2006

David F. Rivera  
Commissioner of Insurance  
State of Colorado  
1560 Broadway Suite 850  
Denver, Colorado 80202

Commissioner Rivera:

In accordance with §§ 10-1-203 and 10-3-1106, C.R.S., a limited Market Conduct examination of the private passenger automobile business practices of NEW HAMPSHIRE INDEMNITY COMPANY, INC. has been conducted.

The Company's underwriting records were examined at its Main Administrative Office, Deerfield Corporate Centre Two, 13010 Morris Road, Suite 500, Alpharetta, Georgia 30004. The Company's claims records were examined at its Colorado regional office, 7173 S. Havana St., Bldg A, Englewood, Colorado 80112.

The examination covered the period from July 1, 2003 to December 31, 2004.

A report of the examination of NEW HAMPSHIRE INDEMNITY COMPANY, INC. is, herewith, respectfully submitted.

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James T. Axman, CIE

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Frederick T. Verny, Jr., AIE, FLMI

Independent Market Conduct Examiners

**MARKET CONDUCT  
EXAMINATION REPORT  
OF  
NEW HAMPSHIRE INDEMNITY COMPANY, INC.**

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**COMPANY PROFILE**

New Hampshire Indemnity Company, Inc. (the Company) is a Pennsylvania domiciled insurance company licensed to write property and casualty insurance. The Company is a wholly owned subsidiary of New Hampshire Insurance Company, which is a wholly owned subsidiary of NHIG Holding Corp., which is a wholly owned subsidiary of American International Group, Inc. (AIG).

The Company writes private passenger automobile insurance within the United States and is distributed primarily through the independent agency system.

The Company was authorized to write insurance in Colorado on December 30, 1977, and its certificate of authority included the following lines of business:

- Fidelity & Surety
- General Casualty
- General Property
- Motor Vehicle (Casualty)
- Motor Vehicle (Property)
- Workers' Compensation

\*As of the calendar year 2004 the Company had reported premium in Colorado of \$14,010,000 for Private Passenger Automobile Insurance, representing a .14% market share.

\*Data as reported in the 2004 Colorado Insurance Industry Statistical report.

### **PURPOSE AND SCOPE OF EXAMINATION**

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado Insurance Law §10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct examinations. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the examination was to determine the Company's compliance with Colorado insurance law and with generally accepted operating principles related to Private Passenger Automobile insurance laws. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners and the Colorado Division of Insurance. In reviewing material for this report the examiners relied primarily on records and material maintained by the Company. The examination covered an eighteen (18) month period of the Company's operations, from July 1, 2003 to December 31, 2004.

File sampling was based on a review of underwriting and claims files that were systematically selected by using ACL™ software and computer data files provided by the company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file any concerns or discrepancies were noted on comment forms and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of each sample the Company was provided a summary of the findings for that sample. The examination report is a report by exception. Therefore, much of the material reviewed is not addressed in this written report. Reference to any practices, procedures, or files, which manifested no improprieties, was omitted.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of the examination (e.g. timeliness of claims payment), and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) were also included.

The report addresses Private Passenger Automobile and contains information regarding exceptions to the Colorado insurance law. The examination included review of the following:

1. Company Operations and Management
2. Complaints
3. Underwriting
4. Rating
5. Claims Practices

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance. Examination findings may result in administrative action by the Division of Insurance.

**EXAMINERS' METHODOLOGY**

The examiners reviewed the Company's Private Passenger Automobile underwriting, rating, and claims practices to determine compliance with the Colorado insurance law as outlined in Exhibit 1.

**Exhibit 1**

<b>Law</b>	<b>Subject</b>
Section 10-1-128	Fraudulent Insurance Acts.
Section 10-4-116	Use of credit information
Section 10-4-404.5	Rating plans – Property and Casualty Type II insurers
Section 10-4-413	Records required to be maintained
Section 10-4-602	Basis for Cancellation.
Section 10-4-603	Notice.
Section 10-4-604	Nonrenewal.
Section 10-4-605	Proof of notice.
Section 10-4-609	Insurance protection against uninsured motorists-applicability.
Section 10-4-610	Property damage protection against uninsured motorists.
Section 10-4-611	Elimination of discounts – damage by uninsured motorist.
Section 10-4-613	Glass repair and replacement.
Section 10-4-614	Inflatable restraint systems - replacement - verification of claims.
Section 10-4-618	Unfair or Discriminatory trade practices notification
Section 10-4-626	Prohibited reasons for nonrenewal or refusal to write auto
Section 10-4-627	Discriminatory standards-proof of financial responsibility
Section 10-4-628	Refusal to write – changes in – cancellation-nonrenewal prohibited
Section 10-4-629	Cancellation-renewal-reclassification
Section 10-4-630	Exclusion of named driver
Section 10-4-632	Reduction in rates for drivers aged 55 or older with drivers education
Section 10-4-633	Certification of policy and notice forms
Section 10-4-634	Assignment of payment for covered benefits
Section 10-4-642	Prompt payment of direct benefits - legislative declaration - definitions.
Section 10-3-1103	Unfair methods of competition and unfair or deceptive acts or practices prohibited.
Section 10-3-1104	Unfair methods of competition and unfair or deceptive acts or practices.
Regulation 1-1-7	Market Conduct Record Retention.
Regulation 1-1-8	Penalties And Timelines Concerning Division Inquiries And Document Rec
Regulation 5-1-2	Application and Binder Forms.
Regulation 5-1-10	Rate and Rule Filing Regulation
Regulation 5-1-16	Limitations on the Use of Credit Information or Insurance Scoring.
Regulation 5-2-1	Relative Value Schedule for No Fault.
Regulation 5-2-2	Renewal of Automobile Insurance Policies – Excluded Named Drivers.
Regulation 5-2-6	Automobile No Fault Cost Containment Options.
Regulation 5-2-8	Timely Payment of Personal Protection Benefits.
Regulation 5-2-9	Personal Injury Protection Examination Program.
Regulation 5-2-11	Transition from No-Fault Auto to Tort System.
Regulation 5-2-12	Automobile Insurance Consumer Protections.
Regulation 5-2-15	Concerning Consumer Protection for Vehicle Valuation and Rental Reimbursements
Regulation 6-1-1	Limiting coverage.
Regulation 6-2-1	Complaint Record Maintenance.



**Company Operations/Management**

The examiners reviewed Company management, implementation, and quality controls, record retention, installment payment plans, anti-fraud plan, forms certification, and timely cooperation with the examination process.

**Complaints**

The examiners compared the Division of Insurance complaint database log against the Company's log to determine complaint activity. Consumers filed two (2) written claims complaints during the period under examination.

**Contract Forms and Endorsements**

The following Private Passenger Automobile forms and endorsements were filed for certification with the Colorado Division of Insurance on June 16, 2004: During the course of the underwriting phases, the format, language, and disclosures contained on these forms were also reviewed for compliance with the Colorado law.

<b>Title</b>	<b>Form</b>
Personal Auto Policy	PP 00 01 (06 94)
Amendment of Policy Provisions-Colorado	PP 01 61 (10 02)
Federal Employees Using Autos in Government Business	PP 03 01 (08 86)
Towing and Labor Costs Coverage	PP 03 03 (04 86)
Split Liability Limits	PP 03 09 (04 86)
Additional insured-Lessor	PP 03 19 (08 86)
Mexico Coverage	PP 03 21 (06 94)
Joint Ownership Coverage	PP 03 34 (09 93)
Mexico Collision Coverage-Colorado	PP 03 57 (02 92)
Uninsured Motorists Coverage-Colorado	PP 04 25 (07 02)
Property Damage Uninsured Motorists Coverage-Colorado	PP 04 37 (04 99)
Coverage For Damage to Your Auto Exclusion Endorsement	PP 13 01 (12 99)
Personal Auto Policy Jacket	40873 (08 96)
Personal Auto Policy Jacket Cover	JAC CW (04 03)
Personal Auto Policy Jacket Index	PJ CW (06 94)
Personal Auto Policy Jacket Signature	JACSIG (03 02)
Lienholder Deductible Endorsement	LIEN 02 (11 91)
Lienholder Clause	LH 01 (02/97)
Amendatory Endorsement-(Policies w/o Rental)	CW 00 01 (04 96)
Additional Equipment Coverage	ADDON1 (04 91)
Named Driver Exclusion Acknowledgement	CO DRX (04 02)
Lienholder Notice	AU CW12 (05 04)
Privacy Notice	CW GLB (03 03)
Consumer Disclosure Notice	FCRA MF ALP (03 03)

Disclosure Form	CO 01 (07 03)
Renewal Notice-12 to 6 month conversion	RN (04 01)
Information associated with increase in Premium at Renewal	COEXCLUSION (Renewal) (09 99)
Information associated with Notice of Non-Renewal	COEXCLUSION (Non-Ren) (09 99)
Information associated with Notice of Cancellation	COEXCLUSION (Canc) (09 99)
Automobile Insurance Application-Colorado	CO UAPP (07 03)
Innocent Prior Supplemental Application-Colorado	CO SAPP (10 02)
UM/UIM BI Coverage Rejection	CO UMRJ (07 03)
Named Driver Exclusion Agreement-Colorado	CO DRX (04 02)
Authorized Agreement for Electronic Funds Transfer	CW EFT (06 02)
Fax Cover Page	FAXCOVER (04 03)
Policy Declarations	AIGDEC (04 03)
Payment Schedule	PAYSCHD (12 98)
Notice of Cancellation of Personal Auto Policy-Non Payment	None assigned
Notice of Cancellation of Personal Auto Policy- EFT Non Payment	None assigned
Notice of Cancellation of Personal Auto Policy- Underwriting	None assigned
Notice of Non-Renewal of Personal Auto Policy- Underwriting	None assigned
Reinstatement Notice	None assigned
Cancellation Memo	None assigned
Notice of Unpaid Premium	None assigned
Auto Insurance Installment Bill	None assigned
SR-22 (AAMVA Uniform FR Form)	R1302 (10 91)
SR-26 (AAMVA Uniform FR Form)	R1307 (10 91)
ID Card	G8105 (02 92)
Underwriting Memo	None assigned
Change to Withdrawal Schedule	None assigned
ACH Debit Notice	None assigned

**Private Passenger Automobile Cancellations/Non-renewals/Surcharges/**

For the period under examination, systematically selected samples were taken as follows:

<b>Review Lists</b>	<b>Population</b>	<b>Sample Size</b>	<b>Percentage to Population</b>
Cancellations	376	50	13%
Nonrenewals	7	7	100%
Surcharges	10	10	100%
Tort Conversion	na	na	na

**Rating**

The examiners reviewed the rate and rule filings, statistical justifications, and methodology submitted to Colorado Division of Insurance for the period under examination. This information was compared against a sample of in-force policies, rated by coverage selection, to determine compliance with filed base rates, territory codes, symbols, class plans, discounts, tier-rating factors, and final premium calculations. A sample of agents submitting new business was verified against the producer database for licensing compliance.

<b>Review List</b>	<b>Population</b>	<b>Sample Size</b>	<b>Percentage to Population</b>
Policy Rate Review	3,199	50	2%

**Claims**

For the period under examination, the examiners systematically selected the following samples to determine compliance with claims handling practices and manual rules:

<b>Review Lists</b>	<b>Population</b>	<b>Sample Size</b>	<b>Percentage to Population</b>
Auto Claims Paid	349	50	14%
Auto Claims Paid - PIP	101	50	50%
Auto Claims - CWP	250	50	20%
Auto Medical Claims Paid	1	1	100%

### **EXAMINATION REPORT SUMMARY**

The examination resulted in seven (7) issues arising from the Company's apparent failure to comply with Colorado insurance laws that govern all property and casualty insurers operating in Colorado.

#### **Company Operations and Management:**

In the area of company operations and management no compliance issues are addressed in this report:

#### **Complaint Handling:**

In the area of complaint handling, no compliance issues are addressed in this report.

#### **Underwriting:**

In the area of underwriting, one (1) compliance issue is addressed in this report. This issue arose from Colorado insurance law requirements involving Manual rules, and procedures encompassing the operations of new business and renewal policy issuance, cancellation, rejection of risks, non-renewals, and surcharges. The issue in this phase was identified as follows:

- **Incorrect Senior Safe Driver Discount provision.**

It is recommended that the Company review its underwriting practices and procedures and make necessary changes to ensure future compliance with applicable statutes and regulations as to this issue.

#### **Rating:**

In the area of rating, two (2) compliance issues are addressed in this report. Issues arise from Colorado insurance law requirements involving rate, rule filings, statistical justifications, methodology and the rating of policies with compliance towards base rates, territory codes, symbols, class plans, discounts, tier-rating factors, and final premium calculations. The issues in this phase were identified as follows:

- **Failure to file an actuarial justification for placing applicants, without prior insurance, into a higher-priced rating tier program or plan.**
- **Failure to actuarially justify an expense fee of \$50 added to policies cancelled for non-payment within the first 90 days of inception.**

It is recommended that the Company review its rating and rate filing practices and procedures and make necessary changes to ensure future compliance with applicable statutes and regulations as to each issue addressed.

**Claim Practices:**

In the area of claim practices, four (4) compliance issues are addressed in this report. Issues arise from Colorado insurance law requirements dealing with the fair and equitable settlements, claims handling practices, payment of Medical and PIP Payment claim benefits, notification of unfair trade practices and handling provisions, Total loss practices, Subrogation, investigation and contact, and the timeliness and accuracy of claim payments. The issues in this phase were identified as follows:

- **Failure, in some cases, to pay the correct title transfer fee on total loss claims.**
- **Delay, in some cases, in the payment of PIP Benefits.**
- **Failure, in some cases, to adequately maintain claim records to substantiate handling and facilitate market conduct review.**
- **Failure to provide a disclosure of the provisions of the unfair or discriminatory trade practices to the insured or claimant involved in an automobile accident.**

It is recommended that the Company review its claim handling practices and procedures and make necessary changes to ensure future compliance with applicable statutes and regulations as to the issue addressed.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

Results of previous Market Conduct Exams are available on the Colorado Division of Insurance's website at [www.dora.state.co.us/insurance](http://www.dora.state.co.us/insurance) or by contacting the Colorado Division of Insurance.

**NEW HAMPSHIRE INDEMNITY COMPANY, INC**

**PERTINENT FACTUAL FINDINGS**

**UNDERWRITING**

**Issue A: Incorrect Senior Safe Driver Discount provision.**

Section 10-4-632, C.R.S. Reduction in rates for drivers aged fifty-five years or older who complete a driver's education course - legislative declaration, states in part:

(5) The premium reduction required by this section shall be effective for an insured for a *three-year period [emphasis added]* after successful completion of the approved course. However, the insurer may require, as a condition of providing and maintaining such discount, that the insured, during the three-year period after course completion, not be involved in an accident for which the insured is held at fault.

The Company's Colorado Auto 1.0, Program Underwriting Guidelines for new business, page 10, effective 07/13/2004, states in part:

**SENIOR SAFE DRIVER**

- Applied when the insured is age 55 or older and has successfully completed a Motor Vehicle Accident Prevention Course approved by the Department of public safety.
- The discount will apply for 2 years from the date the course was completed.

The Colorado Insurance Law requires that the senior safe driver discount be applied for a three year period; the Company's manual rule provision for two years is not in compliance and should be amended.

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**Recommendation # 1:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-4-632, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has implemented necessary provision changes to the underwriting manual rule and provided evidence that it has properly applied the senior safe driver discount for three (3) years, in order to ensure compliance with Colorado insurance law.



**RATING**

**Issue B: Failure to file an actuarial justification for placing applicants, without prior insurance, into a higher-priced rating tier program or plan.**

Section 10-4-628, C.R.S. Refusal to write-changes in -cancellation-non-renewal of policies prohibited states in part:

(II) Unless actuarial justification in support of the insurer's action that has been filed with the commissioner demonstrates that there is an increase in risk, no insurer shall refuse to write a policy for a new applicant, surcharge the premium of a new applicant, or place a new applicant in a higher-priced program or plan based solely upon:

- (A) The fact that the applicant had no prior insurance;
- (B) The identity of the applicant's prior insurer; or
- (C) The applicant's prior type of coverage, including assigned risk or residual market coverage or any plan other than a preferred plan.

(IV) An insurer shall not refuse to write a policy for a new applicant, surcharge the premium of a new applicant, or place a new applicant in a higher-priced program or plan solely because the applicant had no prior insurance if the applicant was not required to have insurance under Section 10-4-620 or under a similar law in another state.

Additionally, Colorado Regulation 5-2-12. Auto Accident Reparations Act (No-Fault) Rules And Regulations, jointly promulgated by the Commissioner of Insurance and the Executive Director of the Department of Revenue under the authority of Sections 42-1-204, 104-704, 10-4-718, 10-4-719.7, and 10-1-109, C.R.S. states, in part:

Section 5 Rules.

B. Rules Limiting Insurers? Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages

1. Basis for refusal to write a policy of automobile insurance.

a. Colorado law prohibits discrimination solely based on age, color, sex, national origin, residence, marital status, or lawful occupation, including the military service. Prohibited underwriting or rating practices may not be used in combination with any other practice when use of the prohibited practice results in a rejection, cancellation non-renewal, reclassification or reduction in coverage which would not have occurred but for the prohibited practice.

b. Unless actuarial justification in support of the insurer's action has been filed with the Division of Insurance, insurers shall not refuse to write a policy for new applicants, surcharge premiums, of new applicants or place new applicants in higher priced programs or plans solely based on:

- (1) The fact that the applicant had no prior insurance;
- (2) The identity of the applicant's prior insurer; or
- (3) The applicants prior type of coverage, including assigned risk or residual market coverage or any plan other than a preferred plan.

Section 10-4-404.5, C.R.S., Rating plans - property and casualty Type II insurers - rules, states in part:

(1) The Commissioner may promulgate rules and regulations for type II insurers which establish reasonable standards for rating plans, including experience rating plans, schedule rating plans, and expense reduction plans, and which are designed to modify rates in the development of premiums for individual risks insured in the property and casualty insurance market. Such rules and regulations may permit recognition of expected differences in loss and expense characteristics and shall be designed so that such plans are reasonable and equitable in their application and are not unfairly discriminatory. Such rules and regulations shall not prevent the development of new rating methods which would otherwise comply with this part...

4. The rules and regulations may establish maximum charges against and credits to the experience rating of an insured that may result from the application of a rating plan. The rules and regulations may encourage the use of loss control programs, safety programs, and other methods of risk management and may require insurers to maintain documentation of the basis for the charges and credits applied under any plan. The rules and regulations may also require the rating plans to include merit rating to the extent feasible.

The Notice to All Insurers sent February 1998, as a result of Senate Bill 98-12, further defines Actuarial justification as follows:

"Actuarial justification means numerical demonstration of a difference in expected risk between a person with prior insurance and those without, after other risk affecting considerations such as age and geographic location have been factored out. You are strongly encouraged to re-file if your current filing is not supported by proper actuarial justification as defined herein."

It appears that the Company was using evidence of prior insurance in new business applications for tier placement, which also affects the premium. Those with no prior insurance are placed in a higher rated tier, whereas those with prior insurance documentation receive a lower premium. The Colorado Insurance law indicates that unless actuarial justification in support of the insurer's action has been filed with the Division of Insurance, new applicants cannot be placed in higher priced programs or plans solely based on the fact that the applicant had no prior insurance.

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**Recommendation # 2:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-4-405.5 and 10-4-628, C.R.S. and Colorado Regulation 5-2-12. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has filed an actuarial justification for using no prior insurance as a factor for placing applicants in a higher-priced program and implemented necessary procedural changes in order to ensure compliance with Colorado insurance law.

**Issue C: Failure to actuarially justify an expense fee of \$50 added to policies cancelled for nonpayment within the first 90 days of inception.**

Section 10-4-403, C.R.S. Standards for rates - competition - procedure - requirement for independent actuarial opinions regarding 1991 legislation states in part:

(1) Rates shall not be excessive, inadequate, or unfairly discriminatory. The following rate standards shall apply:

(II) Concerning expenses, the expense provisions included in the rates to be used by an insurer shall reflect the operating methods of the insurer and, so far as it is credible, its own actual and anticipated expenses experience;

Colorado Regulation 5-1-10 (III)(B)(1), Rate and Rule Filing, promulgated under the authority of Section 10-1-109, C.R.S., states, in part:

**B. RATE AND RULE FILING REQUIREMENTS.**

1. Every property and casualty insurer, including workers' compensation and title insurers, are required to file insurance rates, minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.

In the Company's Colorado Auto 1.0 Program rate and rule filings for new business effective 07/13/2004, a return premium for nonpayment of premium cancellations within the first 90 days after policy inception will be computed by the pro rata method less a \$50 cancellation fee. It appears that the fee applied has not been actuarially developed to show actual administrative costs for processing and appears to be unjustified and excessive when compared to the Company's actual cost of services required for cancellation operations.

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**Recommendation # 3:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-4-403, C.R.S. and Colorado Regulation 5-1-10. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has actuarially justified the use of a \$50 expense fee added to nonpayment premium cancellations in order to ensure compliance with Colorado insurance law.

**CLAIMS PRACTICES**

**Issue D: Failure, in some cases, to pay correct title transfer fees on total loss claims.**

Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, provides, in part:

(1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(h) Unfair claim settlement practices: Committing or performing, either in willful violation of this part 11 or with such frequency as to indicate a tendency to engage in a general business practice, any of the following:

(VI) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

Regulation 5-2-15, Concerning Consumer Protection for Vehicle Valuation and Rental Reimbursements, as promulgated under the authority of Sections 10-1-109, 10-3-1110(2), 10-4-601.5 and 10-4-639(3)&(4), C.R.S., states in part:

**Section 2 Basis and Purpose**

The purpose of this regulation is to establish standards for payment of claims for vehicle rental and collision damage waivers, and for valuation of total loss claims under private passenger auto insurance policies.

**Section 3 Applicability and Scope**

This regulation shall apply to all insurers that provide automobile insurance policies.

**Section 5 Rules**

**A. Total Loss Claims**

(1) The insurer shall develop and maintain written procedures that will be consistently used when determining the value of a vehicle declared a total loss.

(2) Claims files shall include the credible source used for valuation by vendor name and the methodology for determining the amount of the loss. Claims files shall document that the valuation considered unique characteristics of a total loss vehicle, such as classic status, unique finishes, mileage and/or, special accessories.

Additionally, Section 42-6-137, C.R.S. Certificates of Title, Fees, states in part:

(1) (a) Upon filing with the authorized agent an application for a certificate of title, the applicant shall pay to the agent a fee of *seven dollars and twenty cents [emphasis added]*, which shall be in addition to the fees for the registration of such motor vehicle.

(b) (I) In addition to the fee imposed in paragraph (a) of this subsection (1), upon filing with the authorized agent any application for a certificate of title, the applicant shall pay to the authorized agent an *additional fee of two dollars and thirty cents[emphasis added]*.

The following chart illustrates the significance of error versus the population and sample examined:

**Private Passenger Automobile Claims Paid**

Population	Sample Size	Number of Exceptions	Percentage to Sample
349	50	9	18%

An examination of fifty (50) paid Automobile claim files, representing fourteen (14%) of all paid claim files handled by the Company during the examination period, showed nine (9) exceptions (18% of the sample) wherein the Company failed to pay the correct title transfer fee on total loss claims as required by Colorado insurance law. In the instances cited, it was noted that the Company was using \$13.75 and \$20.00 fee amounts in its transactions.

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**Recommendation # 4:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-3-1104, 42-6-137, C.R.S. and Colorado Regulation 5-2-15. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed its claims handling practices and implemented necessary procedural changes in order to ensure compliance with Colorado insurance law.

**Issue E: Delay, in some cases, in the payment of PIP Benefits.**

Section 10-4-642, C.R.S. Prompt payment of direct benefits - legislative declaration – definitions, states in part:

(1) The general assembly finds, determines, and declares that patients and health care providers are entitled to receive reimbursements from auto insurance entities in a timely manner. Therefore, it is in the interest of the citizens of Colorado that reasonable standards be imposed for the timely payment of claims.

(6) (a) Clean claims shall be paid, denied, or settled within thirty calendar days after receipt by the insurer if submitted electronically and within forty-five calendar days after receipt by the insurer if submitted by any other means.

Section 10-3-1104, C.R.S. Unfair methods of competition and unfair or deceptive acts or practices

(1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(h) Unfair claim settlement practices: Committing or performing either in willful violation of this part 11 or with such frequency as to indicate a tendency to engage in a general business practice, any of the following:

(XIII) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;

The following chart illustrates the significance of error versus the population and sample examined:

**Private Passenger Automobile Medical Claims Paid**

Population	Sample Size	Number of Exceptions	Percentage to Sample
101	50	17	34%

An examination of fifty (50) PIP Payment Benefit claim files, representing 49.5% of all paid PIP benefit claim files handled by the Company during the examination period, showed seventeen (17) exceptions (34% of the sample) wherein the Company failed to pay at least one medical bill in each file within the 30 day statutory standard as required by Colorado insurance law.

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**Recommendation # 5:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-4-642 and 10-3-1104, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed its claims handling of medical payment benefits and implemented necessary procedural changes in order to ensure compliance with Colorado insurance law.



**Issue F: Failure, in some cases, to adequately maintain claim records to substantiate handling and facilitate market conduct review.**

Section 10-4-413 (1), C.R.S., "Records required to be maintained", states in part:

every insurer: ...shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics, or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys, or inspections made or used by it, so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group or association complies with the provisions of this part 4 applicable to it...

Additionally, Colorado Regulation 1-1-7, promulgated under the authority of Section 10-1-109, C.R.S. states in part:

#### Section 4. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES

A. Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claim's practices, rating, underwriting, marketing, complaint/grievance handling, producer licensing records, and additionally for health insurers/carriers or related entities: network adequacy, utilization review, quality assessment and improvement, and provider credentialing. Records for this regulation regarding market conduct purposes shall be maintained for the current calendar year plus two prior calendar years.

#### Section 6. CLAIM RECORDS

The claim records shall be maintained so as to show clearly the inception, handling and disposition of each claim. The claim records shall be sufficiently clear and specific so that pertinent events and dates of these events can be reconstructed.

A. The record shall include at least the notification of claim, proof of loss, (or other form of claim submission) claim forms, proof of claim payment check or draft, notes, contract, declaration pages, information on type of coverage, endorsements or riders, work papers, any written communication, any documented or recorded telephone communication related to the handling of a claim, including the investigation, payment or denial of the claim, and any claim manuals or other information necessary for reviewing the claim. Where a particular document pertains to more than one record, insurers may satisfy the requirements of this paragraph by making available, at the site of a market conduct examination, a single copy of each document.

B. Documents in a claim record received from an insured, the insured's agent, a claimant, the department or any other insurer shall bear the initial date of receipt date-stamped by the insurer in a legible form in ink, an electronic format, or some other permanent manner. Unless the company provides the examiners with written procedures to the contrary, the earliest date stamped on a document will be considered the initial date of receipt.

C. If an insurer, as its regular business practice, places the responsibility for handling certain types of claims upon company personnel other than its claims personnel, the insurer need not duplicate its records for maintenance by claims personnel. These claims records shall be maintained as part of the records of the insurer's operations and shall be readily available to examiners.

The Company could not provide the examiners with seven (7) complete claim files identified on the Claims Paid, Claims Denied, and Pip Paid sample list. The Company was able to reproduce the computer system log notes and payment history information for these missing claims files, however, as the files were missing pertinent claim documents to substantiate claims handling, an adequate market conduct review of these files could not be completed and therefore not in compliance with Colorado insurance law.

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**Recommendation # 6:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-4-413(1), C.R.S. and Colorado Regulation 1-1-7. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed its retrieval system for claims files and documents to substantiate claims handling and facilitate market conduct review and implemented necessary procedural changes in order to ensure compliance with Colorado insurance law.

**Issue G: Failure to provide a disclosure of the provisions of the unfair or discriminatory trade practices to the insured or claimant involved in an automobile accident.**

Section 10-4-618, C.R.S. Unfair or discriminatory trade practices - legislative declaration states in part;

(1) (a) The general assembly determines that competition is fundamental to the free market system and that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality commodities and services, and the best environment for democratic and social institutions. Therefore, the right of the individual to choose a repair business is a matter of statewide concern.

(b) The general assembly declares that the purpose of this section is:

(I) To safeguard the public against monopolies, trusts, and market barriers and to foster and encourage competition by prohibiting unfair and discriminatory insurance practices that impede fair and honest competition;

(II) To ensure that all consumers benefit from such competition and expansion; and (III) To enhance Colorado's economic development.

(3) An insurer or its agent that issues or renews a policy shall:

(f) Provide oral or written notice of the provisions of this section to the beneficiary or claimant within three business days after a claim is made;

(4) An insurer is not required to furnish the notices required by this section more than once to each beneficiary or claimant for each claim.

The Colorado insurance law, regarding discriminatory trade practices, requires that the Company claims representatives provide oral or written notice regarding the provisions of this law. In review of the claims files provided, there appeared to be inconsistent evidence that the Company was meeting this requirement fully and routinely by procedure.

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**Recommendation # 7:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-4-618, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed its claims handling procedure providing the provisions of unfair or discriminatory trade practices to those involved in an accident and implemented necessary consistent procedural changes in order to ensure compliance with Colorado insurance law.

**Summary of Recommendations*****NEW HAMPSHIRE INDEMNITY COMPANY, INC.***

ISSUE	REC #	PAGE
<b>Underwriting</b>		
Issue <b>A</b> : Incorrect Senior Safe Driver Discount provision.	1	16
<b>Rating</b>		
Issue <b>B</b> : Failure to file an actuarial justification for placing applicants, without prior insurance, into a higher-priced rating tier program or plan.	2	19
Issue <b>C</b> : Failure to actuarially justify an expense fee of \$50 added to policies cancelled for nonpayment within the first 90 days of inception.	3	20
<b>Claims Handling</b>		
Issue <b>D</b> : Failure, in some cases, to pay the correct title transfer fee on total loss claims.	4	23
Issue <b>E</b> : Delay, in some cases, in the payment of PIP Benefits.	5	24
Issue <b>F</b> : Failure, in some cases, to adequately maintain claim records to substantiate handling and facilitate market conduct review.	6	26
Issue <b>G</b> : Failure to provide a disclosure of the provisions of the unfair or discriminatory trade practices to the insured or claimant involved in an automobile accident.	7	27

Independent Market Conduct Examiners

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Participated in this examination and in the preparation of this report